

CLAUSE H-4 – ALLOWABLE COST AND PAYMENT (August 2002)

- (a) Invoicing. SURA shall make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by the Subcontracting Officer in accordance with Subpart 31.3 of the Federal Acquisition Regulation (FAR) in effect on the date of the subcontract and the terms of this subcontract. The subcontractor may submit to an authorized representative of the Subcontracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.
- (b) Reimbursing Costs.
- (1) For the purpose of reimbursing allowable costs (except as provided in Subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
 - (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;
 - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid for:
 - (A) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
 - (B) Direct labor (limited to: _____),
 - (C) Direct travel (limited to: _____),
 - (D) Other direct in-house costs (limited to: _____), and
 - (E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government contracts (limited to: _____), and
 - (iii) The amount of progress payments that have been paid to the Subcontractor's subcontractors under similar cost standards.
 - (2) Subcontractor contributions to any pension or other post-retirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes: Provided that the *Subcontractor pays the contribution to the fund within thirty (30) days after the close of the period covered. Payments made thirty (30) days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Subcontractor actually makes the payment.
 - (3) Notwithstanding the audit and adjustment of invoices or vouchers under Paragraph (g) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with Paragraph (d) below.
 - (4) Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to SURA shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) Small Business Concerns. A small business concern may be paid more often than every two (2) weeks and may invoice and be paid for recorded costs for items or services purchased directly for the subcontract, even though the concern has not yet paid for those items or services.
- (d) Final Indirect Cost Rates.
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
 - (2) The Subcontractor shall, within ninety (90) days after the expiration of each of its fiscal years, or by a later date approved by the Subcontracting Officer, submit to the cognizant Subcontracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the subcontract and/or lower tier subcontract to which the rates apply. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative and Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.

- (3) The Subcontractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected subcontract and/or lower tier subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (e) Billing Rates. Until final annual indirect cost rates are established for any period, SURA shall reimburse the subcontractor at billing rates established by the Subcontracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates:
 - (1) Shall be the anticipated final rates; and
 - (2) May be prospectively or retroactively revised by mutual subcontract, at either party's request, to prevent substantial overpayment or underpayment.
- (f) Quick-closeout Procedures. When the Subcontractor and Subcontracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) Audit. At any time or times before final payment, the Subcontracting Officer may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Subcontracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) Final Payment.
 - (1) The Subcontractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer as the Subcontracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Subcontractor's compliance with all terms of this subcontract, SURA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) The Subcontractor shall pay to SURA any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by SURA. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Subcontracting Officer. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
 - (i) An assignment to SURA in form and substance satisfactory to the Subcontracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by SURA under this subcontract; and
 - (ii) A release discharging SURA, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except:
 - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (B) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; provided, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the Subcontracting Officer within six (6) years following the release date or notice of final payment date, whichever is earlier; and
 - (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of SURA against patent liability.